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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 JERRY DAVID AGUILAR,

12 Plaintiff,

13 v.

14 BATES, et al.,

15 Defendant.  
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Case No. 15cv2446-MMA (AGS)

**ORDER DENYING PLAINTIFF'S  
MOTIONS FOR  
RECONSIDERATION AND TO  
ALTER OR AMEND JUDGMENT**

[Doc. Nos. 103, 104]

19 Plaintiff Jerry David Aguilar, a California state prisoner proceeding *pro se*, brought  
20 this action pursuant to 42 U.S.C. § 1983 against five medical professionals at R. J.  
21 Donovan Correctional Facility in San Diego, California, alleging violations of his Eighth  
22 Amendment right to adequate medical care. Defendants moved for summary judgment  
23 as to Plaintiff's claims. *See* Doc. No. 74. On January 17, 2019, the Court granted  
24 Defendants' motion for summary judgment in its entirety. *See* Doc. No. 93. The  
25 following day, the Clerk of Court entered judgment accordingly. *See* Doc. No. 94. On  
26 February 11, 2019, Plaintiff filed a timely notice of appeal. *See* Doc. No. 95. Plaintiff  
27 now moves to alter or amend the judgment pursuant to Federal Rule of Civil Procedure  
28 59(e). *See* Doc. No. 103. Plaintiff also moves for relief from judgment pursuant to

1 Federal Rule of Civil Procedure 60(b).<sup>1</sup> See Doc. No. 104. For the reasons set forth  
2 below, the Court **DENIES** Plaintiff's motions.

### 3 DISCUSSION

4 As an initial matter, Plaintiff moves to alter or amend the judgment pursuant to  
5 Federal Rule of Civil Procedure 59(e) which provides that "[a] motion to alter or amend a  
6 judgment must be filed no later than 28 days after the entry of the judgment." Fed. R.  
7 Civ. P. 59(e). "That time period is jurisdictional and cannot be extended by the court."  
8 *Scott v. Younger*, 739 F.2d 1464, 1467 (9th Cir. 1984) (citing Fed. R. Civ. P. 6(b); *Glass*  
9 *v. Seaboard Coast Line Railroad Co.*, 714 F.2d 1107, 1109 (11th Cir. 1983)). The Clerk  
10 entered a separate judgment in this action on January 18, 2019. See Fed. R. Civ. P.  
11 58(c)(2)(A). Plaintiff's motion, filed on March 7, 2019,<sup>2</sup> is untimely and must be denied  
12 on that basis.

13 Plaintiff also moves for relief from judgment pursuant to Federal Rule of Civil  
14 Procedure 60(b)(6) which provides, in pertinent part, that "the court may relieve a party  
15 or its legal representative from a final judgment, order, or proceeding for . . . any other  
16 reason that justifies relief." Fed. R. Civ. P. 60(b)(6). Once a district court is divested of  
17 jurisdiction through appeal of a final judgment, it lacks the power to grant a motion  
18 brought pursuant to Rule 60(b) without a remand from the court of appeals. See *Davis v.*  
19 *Yageo Corp.*, 481 F.3d 661, 685 (9th Cir. 2007). However, Federal Rule of Civil  
20 Procedure 62.1 provides that "[i]f a timely motion is made for relief that the court lacks  
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22 <sup>1</sup> Plaintiff has also filed a document styled as "Objections to Magistrate's Report and Findings Granting  
23 Defendants Motion for Summary Judgment." See Doc. No. 105. Because the assigned magistrate judge  
24 did not prepare a Report and Recommendation in this action, the Court liberally construes Plaintiff's  
25 submission as a memorandum of points and authorities in support of his motion for relief pursuant to  
Federal Rule of Civil Procedure 60(b)(6).

26 <sup>2</sup> Plaintiff's submissions are subject to the "mailbox rule" which provides that a document is deemed  
27 "filed" by a prisoner at the time he delivers it to the prison authorities for forwarding to the clerk of  
28 court. See *Houston v. Lack*, 487 U.S. 266, 276 (1988); *Douglas v. Noelle*, 567 F.3d 1103, 1107  
(9th Cir. 2009) (holding that the *Houston* mail box rule applies to § 1983 suits brought by *pro se*  
prisoners).

1 authority to grant because of an appeal that has been docketed and is pending, the court  
2 may: (1) defer considering the motion; (2) deny the motion; or (3) state either that it  
3 would grant the motion if the court of appeals remands for that purpose or that the motion  
4 raises a substantial issue.” Fed. R. Civ. P. 62.1. Accordingly, the Court may consider  
5 Plaintiff’s motion within these parameters.

6 The Court notes that Rule 60(b)(6) “is used sparingly as an equitable remedy to  
7 prevent manifest injustice and is to be utilized only where extraordinary circumstances  
8 prevented a party from taking timely action to prevent or correct an erroneous judgment.”  
9 *Latshaw v. Trainer Wortham & Co., Inc.*, 452 F.3d 1097, 1103 (9th Cir. 2006). Here,  
10 Plaintiff has not shown that there are extraordinary grounds justifying relief. Plaintiff  
11 disagrees with the Court’s findings and conclusions, but mere dissatisfaction with the  
12 Court’s summary judgment order or belief that the Court is wrong in its decision are not  
13 adequate grounds for relief. *See Twentieth Century-Fox Film Corp. v. Dunnahoo*, 637  
14 F.2d 1338, 1341 (9th Cir. 1981). Moreover, a motion for reconsideration may not be  
15 used as a vehicle to re-litigate old matters, raise new arguments, or present evidence that  
16 could have been raised prior to entry of the judgment. *See Exxon Shipping Co. v. Baker*,  
17 544 U.S. 471, 486-87 (2008); *see also Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d  
18 877, 890 (9th Cir. 2000) (holding that a motion for reconsideration “may not be used to  
19 raise arguments or present evidence for the first time when they could reasonably have  
20 been raised earlier in the litigation.”).

21 Plaintiff also argues that the validity of the judgment is undermined by the Court’s  
22 failure to appoint counsel to represent Plaintiff and an expert witness to testify on  
23 Plaintiff’s behalf. However, district courts lack authority to require counsel to represent  
24 indigent prisoners in civil rights cases, *see Mallard v. United States Dist. Court*, 490 U.S.  
25 296, 298 (1989), and may only request the voluntary assistance of counsel pursuant to 28  
26 U.S.C. § 1915(e)(1) under “exceptional circumstances,” which were not present in this  
27 case. *See Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). Contrary to Plaintiff’s  
28 contention otherwise, this was not a “legally complex” case. *See King v. Wang*, No.

2:14-cv-1817 KJM DB P, 2018 U.S. Dist. LEXIS 118409, at \*5 (E.D. Cal. July 13, 2018) (citing *Noble v. Adams*, 2009 WL 3028242, at \*1 (E.D. Cal. Sept. 16, 2009) (denying plaintiff's request to appoint medical expert witness in section 1983 action because "the issues are not so complex as to require the testimony of an expert"); *Lopez v. Scribner*, 2008 WL 551177, at \*1 (E.D. Cal. Feb. 27, 2008) (denying plaintiff's request to appoint medical expert witness in § 1983 action because "the legal issues involved in this action are not particularly complex."); *Hooker v. Adams*, 2007 WL 4239570, at \*1 (E.D. Cal. Dec. 3, 2007) (plaintiff's motion for the appointment of an expert witness denied as "the legal issues involved in this action are not particularly complex.")). Additionally, the Court lacks the authority to appoint an expert witness to testify on Plaintiff's behalf. Federal Rule of Evidence 706 permits courts to appoint only neutral expert witnesses. Fed. R. Evid. 706(a). Nor may a court "appoint an expert for plaintiff's benefit to be paid by the court." *Gorton v. Todd*, 793 F. Supp. 2d 1171, 1184 n.11 (E.D. Cal. 2011).

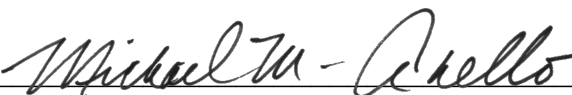
In sum, Plaintiff has not presented "extraordinary circumstances" that would justify relief from judgment.

#### CONCLUSION

Based on the foregoing, the Court **DENIES** Plaintiff's motion to alter or amend the judgment pursuant to Federal Rule of Civil Procedure 59(e) as untimely. The Court **DENIES** Plaintiff's motion for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b)(6) on the merits.

#### **IT IS SO ORDERED.**

DATE: May 24, 2019

  
HON. MICHAEL M. ANELLO  
United States District Judge